

MONTANA LEGISLATIVE HISTORY

Chapter 186 19 97

Bill H _____ S 54

Original bill & history / C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) 3/05 _____ C

Hearing Date(s) 1/13 _____ C

_____ C

_____ C

_____ C

_____ C

_____ C

1-16 _____ C

Date Out 3/6 _____ C

1/17

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

SB 54 INTRODUCED BY SHEA *LC0267 DRAFTER: LANE*

REVISE THE LAWS PERTAINING TO CRIME VICTIMS AND VICTIMS
COMPENSATION

BY REQUEST OF MONTANA BOARD OF CRIME CONTROL & DEPARTMENT
OF JUSTICE

12/26	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/03	REFERRED TO JUDICIARY		
1/06	FIRST READING		
1/08	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/13	HEARING		
1/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/18	2ND READING PASSED	38	3
1/20	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
1/21	FIRST READING		
1/21	REFERRED TO JUDICIARY		
3/05	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/15	2ND READING CONCURRED AS AMENDED	96	2
3/20	3RD READING CONCURRED	98	2
	RETURNED TO SENATE WITH AMENDMENTS		
3/22	2ND READING AMENDMENTS CONCURRED	49	0
3/24	3RD READING CONCURRED AS AMENDED	50	0
3/27	SIGNED BY PRESIDENT		
3/27	SIGNED BY SPEAKER		
3/27	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 186		
	EFFECTIVE DATE: 07/01/97		

SB 55 INTRODUCED BY BENEDICT *LC0152 DRAFTER: NISS*

AMEND THE MONTANA MEDICAL CARE SAVINGS ACCOUNT ACT OF 1995
TO ALLOW ACCOUNT HOLDERS TO ADMINISTER THEIR OWN ACCOUNT

12/26	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/03	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/06	FIRST READING		
1/15	FISCAL NOTE RECEIVED		
1/16	FISCAL NOTE PRINTED		
1/31	HEARING		
2/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/10	2ND READING PASSED	47	2
2/11	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/12	FIRST READING		
2/12	REFERRED TO HUMAN SERVICES & AGING		
3/05	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED		
3/15	2ND READING CONCURRED	98	0
3/17	3RD READING CONCURRED	100	0
	RETURNED TO SENATE		
3/19	SIGNED BY PRESIDENT		
3/21	SIGNED BY SPEAKER		
3/21	TRANSMITTED TO GOVERNOR		

SENATE BILL NO. 54

INTRODUCED BY SHEA

BY REQUEST OF THE MONTANA BOARD OF CRIME CONTROL AND THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO CRIME VICTIMS AND VICTIMS COMPENSATION; PROHIBITING THE IMPOSITION OF CHARGES FOR FILING A PETITION FOR AN ORDER OF PROTECTION; CLARIFYING THAT RESTITUTION PAYMENTS WILL BE MADE TO THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT IF THE ACCOUNT HAS PAID BENEFITS TO THE VICTIM; SPECIFYING PROBATION SUPERVISORY FEES IN THE ALLOCATION OF PAYMENTS MADE BY AN OFFENDER; CLARIFYING THE OBLIGATION OF LAW ENFORCEMENT AGENCIES TO PAY FOR INVESTIGATIVE MEDICAL EXAMINATIONS OF VICTIMS OF CERTAIN SEXUAL OFFENSES; AUTHORIZING VICTIMS' DEATH BENEFITS TO BE PAID BY LUMP SUM; EXTENDING THE SUBROGATION RIGHTS OF THE CRIME VICTIMS COMPENSATION PROGRAM TO RECOVERIES RECEIVED BY THE VICTIM FROM ANY THIRD PARTY; LIMITING VICTIMS' WAGE LOSS BENEFITS TO 26 WEEKS; AMENDING SECTIONS 40-15-204, 46-15-411, 46-18-251, 53-9-102, 53-9-103, AND 53-9-128, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-15-204, MCA, is amended to read:

"40-15-204. Written orders of protection. (1) The court may ~~determine~~, on the basis of the respondent's history of violence, the severity of the offense at issue, and the evidence presented at the hearing, determine that, to avoid further injury or harm, the petitioner needs permanent protection. The court may order that the order of protection remain in effect permanently.

(2) In a dissolution proceeding, the district court may, upon request, issue either an order of protection for an appropriate period of time or a permanent order of protection.

(3) An order of protection may include all of the relief listed in 40-15-201, when appropriate.

(4) An order of protection may include restraining the respondent from any other named family member who is a minor. If this restriction is included, the respondent must be restrained from having contact with the minor for an appropriate time period as directed by the court or permanently if the court

finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

(5) An order of protection issued under this section may continue for an appropriate time period as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be terminated upon the petitioner's request that the order be dismissed.

(6) An order of protection must include a section that indicates whether there are any other civil or criminal actions pending involving the parties, a brief description of the action, and the court in which the action is filed.

(7) An amendment to a temporary order of protection or to an order of protection is effective only after it has been served in writing on the opposing party.

(8) There is no cost to file a petition for an order of protection or for service of an order of protection.

(9) Any temporary order of protection or order of protection must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties of up to \$10,000 in fines and up to a 5-year jail sentence.

This order is issued by the court, and the respondent is forbidden to do any act listed in the order, even if invited by the petitioner or another person. This order may be amended only by further order of this court or another court that assumes jurisdiction over this matter."

Section 2. Section 46-15-411, MCA, is amended to read:

"46-15-411. Payment for medical evidence. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall pay for the medical examination of a victim of the alleged sexual intercourse without consent offense when the examination is directed by ~~such~~ the agency ~~and or~~ when evidence obtained by the examination is used for the investigation, ~~or~~ prosecution, or resolution of an offense.

(2) This section does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense."

Section 3. Section 46-18-251, MCA, is amended to read:

"46-18-251. Allocation of fines, costs, restitution, and other charges. (1) If an offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same

criminal proceeding, money collected from the offender must be allocated as provided in this section.

(2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:

(a) payment of charges imposed pursuant to 46-18-236;

(b) payment of supervisory fees imposed pursuant to 46-23-1031;

~~(b)(c)~~ payment of costs imposed pursuant to 46-18-232 or 46-18-233;

~~(c)(d)~~ payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

~~(d)(e)~~ any other payments ordered by the court.

(3) If the victim receives benefits under Title 53, chapter 9, restitution payments must be distributed to the division of crime control of the department of justice in accordance with 53-9-132. In order to receive restitution payments, the division shall submit to the clerk of court or agency designated by the court proof of compensation benefits paid to the victim. Once the victim has been fully compensated for the amount of restitution ordered by the court, either from the crime victims compensation and assistance account or by direct restitution payments, remaining restitution payments must be paid to the division to reimburse benefits previously paid to the victim.

~~(3)(4)~~ If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution."

Section 4. Section 53-9-102, MCA, is amended to read:

"53-9-102. Legislative purpose and intent. It is the intent of the legislature ~~of this state~~ to provide a method of compensating those persons within the state who are innocent victims of criminal acts, including acts of international terrorism, as defined in 18 U.S.C. 2331, that are committed outside of the United States against a resident of this state, and who suffer bodily injury or death and those innocent citizens of this state who are injured or killed in a state that does not have a crime victims compensation program that covers out-of-state residents injured or killed in that state. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons

1 and to coordinate victims' assistance programs."

2
3 **Section 5.** Section 53-9-103, MCA, is amended to read:

4 **"53-9-103. Definitions.** As used in this part, the following definitions apply:

5 (1) "Claimant" means any of the following claiming compensation under this part:

6 (a) a victim;

7 (b) a dependent of a deceased victim; or

8 (c) an authorized person acting on behalf of any of them.

9 (2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for
10 economic loss otherwise compensable under this part ~~which~~ that the claimant has received or ~~which~~ that
11 is readily available to ~~him~~ the claimant from:

12 (a) the offender;

13 (b) the government of the United States or any agency thereof, a state or any of its political
14 subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or
15 advantages makes them excess or secondary to benefits under this part;

16 (c) social security, medicare, and medicaid;

17 (d) workers' compensation;

18 (e) wage continuation programs of any employer;

19 (f) proceeds of a contract of insurance payable to the claimant for loss ~~which~~ that was sustained
20 because of the criminally injurious conduct;

21 (g) a contract, including an insurance contract, providing hospital and other health care services
22 or benefits for disability. ~~Any such~~ A contract in this state may not provide that benefits under this part
23 ~~shall be~~ are a substitute for benefits under the contract or that the contract is a secondary source of
24 benefits and benefits under this part are a primary source.

25 (h) a crime victims compensation program operated by the state in which the victim was injured
26 or killed that compensates residents of this state injured or killed in that state; or

27 (i) any other third party.

28 (3) "Criminally injurious conduct" means conduct that:

29 (a) occurs or is attempted in this state;

30 (b) results in bodily injury or death; and

(c) is punishable by fine, imprisonment, or death or would be so punishable ~~but for the fact~~ except that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a motor vehicle who is found by the division, by a preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term is defined in 61-8-401; or

(d) is committed in a state without a crime victims compensation program that covers a resident of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Division" means the division of crime control of the department of justice.

(6) "Victim" means a person who suffers bodily injury or death as a result of:

(a) criminally injurious conduct;

(b) ~~his~~ the person's good faith effort to prevent criminally injurious conduct; or

(c) ~~his~~ the person's good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct."

Section 6. Section 53-9-128, MCA, is amended to read:

"53-9-128. Compensation benefits. (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period. Weekly compensation payments may not be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1

1 week, weekly compensation payments must be paid from the date the wage loss began. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or until payments are made for 26 weeks, whichever occurs first.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and other treatment approved by the division for the injuries suffered due to criminally injurious conduct.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) must be paid to the spouse for the benefit of the spouse and other dependents unless the division determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) must cease to be paid to the spouse but must continue to be paid to the other dependents as long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding \$3,500, must be paid if all other collateral sources have properly paid expenses but have not covered all expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of the injury has no reasonable prospect of being regularly employed in the normal labor market and who was employable but was not employed at the time of the injury may in the discretion of the division be awarded weekly compensation benefits in an amount determined by the division not to exceed \$100 per week. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the division until payments are made for 26 weeks, whichever occurs first. The claimant must be awarded benefits as provided in subsection (2).

1 (b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was
2 employable but not employed at the time of death may in the discretion of the division be awarded, in a
3 gross single amount payable to all dependents, a sum not to exceed \$100 per week, which is payable in
4 the manner and for the period provided by subsection (3)(b) or for a shorter period as determined by the
5 division. The claimant must be awarded benefits as provided in subsection (4).

6 (8) ~~Amounts~~ Except for benefits paid under subsections (3), (5), and (7)(b) or other benefits paid
7 when the victim is killed as a result of criminally injurious conduct, amounts payable as weekly
8 compensation may not be commuted to a lump sum and may not be paid less frequently than every 2
9 weeks.

10 (9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister
11 of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental
12 health treatment received as a result of the victim's death.

13 (b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is
14 a victim of criminally injurious conduct involving a sexual crime offense and who is not entitled to receive
15 services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a
16 result of ~~the crime~~ that criminally injurious conduct.

17 (c) Total payments made under subsections (9)(a) and (9)(b) may not exceed \$2,000 or 12
18 consecutive months of treatment for each person, whichever occurs first."

19
20 **NEW SECTION. Section 7. Effective date.** [This act] is effective July 1, 1997.

21 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0054 as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

act generally revising the laws pertaining to crime victims and victims compensation; prohibiting the imposition of charges for filing a petition for an order of protection; clarifying that restitution payments will be made to the crime victims compensation and assistance account if the account has paid benefits to the victim; specifying probation supervisory fees in the allocation of payments made by an offender; clarifying the obligation of law enforcement agencies to pay for investigative medical examinations of the victims of certain sexual offenses; authorizing victims' death benefits to be paid by lump sum; extending the subrogation rights of the crime victims compensation program to recoveries received by the victim from any third party; limiting victims' wage loss benefits to 26 weeks.

ASSUMPTIONS:

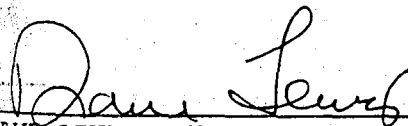
1. Eliminating costs to victims to file a petition for an order of protection should not result in increased costs or reduced revenues for local government. Currently most courts allow for this fee to be waived if requested by the victim.
2. Forensic medical examinations of victims of alleged sexual offenses for the purpose of obtaining evidence are normally the responsibility of the law enforcement agency investigating the crime.
3. Clarifying the disbursement of restitution payments and extending subrogation rights to recoveries from third parties should increase the amount recovered by the crime victims program and deposited to the general fund. There are many variables making it difficult to estimate how much collections would increase, but a modest increase is anticipated.
4. Placing a cap on the number of weeks a victim could receive wage loss benefits is a precautionary measure and will not necessarily result in reduced benefits or costs.
5. Allowing benefits for dependents of a victim who is killed to be commuted to a lump sum payment would increase the initial outlay but not the overall costs.
6. Acts of terrorism committed against Montana residents in a foreign country is a possibility, but the Board of Crime Control (BCC) has not received such a claim to date. Information available to BCC is insufficient to estimate costs.
7. The BCC could perform these duties within the existing budget. For Crime Victims Compensation, no additional funds would be necessary.
8. There is no fiscal impact on the Department of Justice.

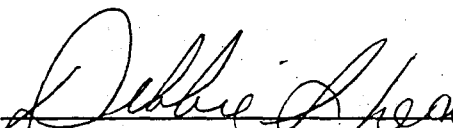
FISCAL IMPACT:

There is no fiscal impact to the state.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

No significant impact anticipated.

 1-7-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1-8-97
DEBBIE SHEA, PRIMARY SPONSOR DATE

Fiscal Note for SB0054, as introduced

SB 54

SENATE JUDICIARY

Page 6

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ									
SB0006	12/27	1/07		PASS AS AMENDED	VOTE:10-0	1-15			1/16
SB0016	HALLIGAN, MIKE			MANDATORY DISCLOSURE OF ASSETS & LIABILITIES IN DISSOLUTION/SEPARATION		1-15			
	12/27	1/08		DO PASS	VOTE:9-1				1/16
SB0031	JENKINS, LOREN			PROVIDE FOR CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS					
	1/03	1/13		PASS AS AMENDED	VOTE:10-0	JUDICIARY 1-22&27			1/22
SB0031	JENKINS, LOREN			PROVIDE FOR CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS					
	1/25			PASS AS AMENDED	VOTE:7-3	1-27			1/28
SB0032	HALLIGAN, MIKE			TEMPORARY PROPERTY RESTRAINING ORDER IN DIVORCE PROCEEDINGS					
	1/03	1/09		PASS AS AMENDED	VOTE:10-0	1-17			1/21
SB0033	HALLIGAN, MIKE			TEMPORARY FAMILY SUPPORT ORDER IN DIVORCE PROCEEDINGS					
	1/03	1/09		PASS AS AMENDED	VOTE:10-0	1-15			1/16
SB0036	LYNCH, J. D.			CODE COMMISSIONER BILL					
	1/03	1/09		PASS AS AMENDED	VOTE: 10-0	1-14			1/15
SB0044	HOLDEN, RIC			LIMIT MOTOR VEHICLE LIABILITY INSURER'S LIABILITY UNDER THE POLICY		1-17			
	1/09	1/15		DO PASS	VOTE:6-3				1/21
SB0046	SPRAGUE, MIKE			CONFISCATION OF DRIVER'S LICENSE OF YOUTH WHO'S DELINQUENT/NEEDS SUPERVISION					
	1/09	1/16		PASS AS AMENDED	VOTE:10-0	1-17			1/21
SB0048	SPRAGUE, MIKE			GENERALLY REVISE YOUTH COURT ACT; YOUTH IN NEED OF INTERVENTION; ASSESSMENTS					
	1/03	1/10		PASS AS AMENDED	VOTE:9-1	1-29			1/30
SB0048	SPRAGUE, MIKE			GENERALLY REVISE YOUTH COURT ACT; YOUTH IN NEED OF INTERVENTION; ASSESSMENTS					
	3/18	3/25		COM RPT - _____	VOTE:10-1	3-25			3/25
SB0054	SHEA, DEBBIE			REVISE VICTIMS' COMPENSATION LAWS					
	1/03	1/13		PASS AS AMENDED	VOTE: 10-0	1-16			1/17
	CHRISTIAENS, CHRIS			STATE AUDITOR REGULATION OF THE SALE OF LIVING TRUSTS					

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 13, 1997, at 10:00 a.m., in the Senate Judiciary Chambers, Room 325, of the State Capitol.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 54, SB 31,
posted January 6, 1997

Executive Action: None

HEARING ON SB 54

Sponsor: SENATOR DEBBIE SHEA, SD 18, Butte/Silver Bow.

Proponents: Gene Kiser, Administrator, Montana Board of Crime Control
Beth Baker, Department of Justice
John Connor, Prosecutor, Office of the Attorney General
Matthew Dale, Executive Director, Friendship Center, Helena.
Betty Waddell, Montana Association of Churches.

Kathy McGowan, Montana Sheriff's and Peace
Officers Association

Troy McGee, Helena Chief of Police, and Montana
Police Officers Association

Opponents: Russell Hill, Montana Trial Lawyers Association
Nancy Sweeney, Lewis and Clark County Clerk of
Court.

Opening Statement by Sponsor: SENATOR DEBBIE SHEA, SD 18,
Butte/Silver Bow. I am presenting SB 54 for the Montana Board of
Crime Control and the Department of Justice. The bill refines
details to meet the growing needs of crime victims in the areas
of forensic medical exams, clarification of disbursements, and
revises victims compensation by eliminating the 26-week period.
It also includes acts of terrorism.

Proponents' Testimony: Gene Kiser, Administrator, Montana Board
of Crime Control (20th year), read from prepared testimony
(EXHIBIT #1), and provided the Committee with copies of Services
and Programs for Montana's Victims of Crime (EXHIBIT #2).

{Tape: 1; Side: A; Approx. Time Count: #3.2; Comments: None.}

Beth Baker, Department of Justice, provided the Committee with a
fact sheet (EXHIBIT #3), and with amendments to the bill (EXHIBIT
#4).

{Tape: 1; Side: A; Approx. Time Count: #4.7; Comments: None.}

John Connor, Prosecutor, Office of the Attorney General. The
amendments pertain to Title 46, Chapters 5 and 24. In the
"mountain men" case, the Nichols' kidnapped Keri Swenson and
murdered Alan Goldstein). Items such as the gun, drawings, and
carvings from the case were held in the clerk of court's office
since before the trial. A hearing to dispose of these items was
scheduled December 9, 1996, but the Swenson family was not
notified so they could appear to voice their concerns or
objections. The amendments would correct this situation by
allowing people such as the Swensons to state their concerns
prior to these hearings.

Matthew Dale, Executive Director, Friendship Center, Helena. I
believe crime victims would benefit from the proposed changes,
especially those with lower incomes, who happen to be mostly
women. The greatest benefits will come in the order of
protection costs, and thorough medical exam costs. There is a
need to make reporting and processing of these crimes easier.

Betty Waddell, Montana Association of Churches. The Association
rejects all forms of hatred, violence, and it urges passage of SB
54.

Kathy McGowan, Montana Sheriff's and Peace Officers Association. The Association supports SB 54 and urges its passage.

Troy McGee, Helena Chief of Police, and Montana Police Officers Association. The Association supports SB 54 and urges its passage.

Opponents' Testimony: **Russell Hill, Montana Trial Lawyers Association (MTLA).** The Association wants more discussion on capping wage laws under restitution. We would like to see subrogation extended on page 3, lines 11-17 of the bill. Collateral source on page 4, line 27, is not a guarantee, so victims could end up with less than they want because of a lawsuit or, for example, a hotel with inadequate security. Otherwise, SB 54 appears to be a very good bill.

Nancy Sweeney, Lewis and Clark County Clerk of Court. (EXHIBIT #5). I ask the Committee remove elimination of fees from the bill, as it puts the counties under the gun to finance items such as orders of protection. Otherwise, SB 54 is a good bill. I am asking that litigants who can afford to pay fees do so.

Questions From Committee Members and Responses: **VICE CHAIRMAN LORENTS GROSFIELD** asked about international terrorism. Page 5, lines 9-10 exclude coverage in a state where a crime victim compensation program exists. What is the program is quite limited? **Beth Baker.** Current statute covers a Montanan in Montana or another state, if that state doesn't have a program. The bill adds international terrorism.

{Tape: 1; Side: A; Approx. Time Count: #20; Comments: None.}

Dara Smith, Program Officer, Crime Victims Compensation, Board of Crime Control. If another state runs out of funds, there are \$50 Million in federal funds available. The bill simply covers terrorism in another country.

SENATOR GROSFIELD. What about non-terrorism crime victims from Montana in another country? **Dara Smith.** They would be covered.

SENATOR STEVE DOHERTY. What is the injured crime victim is out of work for 52 weeks? **Beth Baker.** Right now, the limit to a victim is \$25,000 for medical, plus wage loss, but costs are often more than that now. This amendment gives guidance as to whether to pay wages lost first or medical bills first, as it is felt that providers should not be the only ones not compensated.

SENATOR DOHERTY. Russell Hill, MTLA, commented on subrogation. Assuming Workers' Compensation paid benefits, and a crime victim sought those funds, would Workers' Compensation seek reimbursement from the crime victims fund? Who gets first dibs on the money, as Section 53, Chapter 9, specifically provides the Crime Victim Compensation Program with the right of subrogation?

Beth Baker. When a victim recovers fully, then the Program is compensated. I am willing to amend this language so that the victim would be fully compensated first.

SENATOR SUE BARTLETT. Are recoveries from any third party payor limited to that amount? **Beth Baker.** Yes.

SENATOR BARTLETT. Mr. Dale, would you comment on Ms. Sweeney's statement to the Committee? **Matthew Dale.** What Nancy Sweeney said is correct. Simplicity is better with respect to orders of protection without fees. I believe the bill is a better way.

SENATOR DOHERTY. The medical lien statute requires anyone who gets money for an injury to pay off their medical costs first. Does a medical lien have priority? Are lost wages subject to the medical lien law? **Gene Kiser.** We presently leave it up to the victim to decide whether they want lost wages compensation ahead of paying off their medical costs. They overwhelmingly opt for lost wage compensation first. Recently, we had our first medical lien filed against the program.

SENATOR DOHERTY. I believe we will see more medical liens, so ought we to say the money ought to go to the victim first? There was no response.

CHAIRMAN CRIPPEN. I am asking that **SENATOR SHEA** work on these proposed amendments to keep the bill moving along. Can the Lewis and Clark County Clerk of Court give an estimate of the number of collection fees for now? **Nancy Sweeney.** I believe there will be an increase. It costs \$1 to open each file, plus related costs.

CHAIRMAN CRIPPEN. I am asking that you give your suggestions to **SENATOR SHEA.**

Closing by Sponsor: **SENATOR SHEA.** I ask that the Committee support SB 54.

{Tape: 1; Side: B; Approx. Time Count: #00; Comments: None.}

HEARING ON SB 31

Sponsor: **SENATOR LOREN JENKINS, SD 45, Big Sandy.**

Opponents: **Arlette Randash, Eagle Forum.**
Sharon Hoy, Montana Catholic Conference.
Scott Crichton, ACLU of Montana.

Opening Statement by Sponsor: **SENATOR LOREN JENKINS, SD, 45, Big Sandy.** I received a letter from a sex offender last summer, concerning what he would like to see enacted into law (**EXHIBIT #6**). Gender, race, occupation, economics make no difference in sex offenders. No one is safe from sex offenders, from babies to the elderly. I don't know if it's a sickness, but is a most heinous crime.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1-78-96
DATE 1-13-97
FILE NO. SB 3454

SENATE BILL NO. 54

INTRODUCED BY SENATOR SHEA

PRESENTER Gene Kiser
Administrator Board of Crime Control

Mr. Chairman and members of the Committee, my name is Gene Kiser, Administrator, Montana Board of Crime Control.

The Crime Victims Compensation program is beginning it's 20th year of providing compensation to victims who are without collateral resources.

The Board of Crime Control has a standing task force committee on Victims of Crime. Represented on that task force are County Attorney, District Judge, Law Enforcement, Service Providers and victim advocates.

The Task Force has reviewed and discussed this legislation and has recommended it to the Board of Crime Control. The Board has taken action and also recommends the passage.

Also, this was presented to the Attorney General's Law Enforcement Advisory Committee, the Sheriff and Peace Officers Ass., the Police Chief's Ass, and the Montana Police Protective Ass.. Receiving positive responses.

We have distributed a recently produced guidebook giving guidance to understand the resources available to those who serve victims and witnesses of crime.

Services and Programs for Montana's Victims of Crime

Exhibit # 2 SB54
Booklet

The full exhibit is available from:

MT Historical Society Archives

225 North Roberts

P.O. Box 201201

Helena, MT 59620-1201

Phone # (406)444-4774

Montana Department of Justice

3
1-13-97
SB 54
~~SB 54~~

DEPARTMENT OF JUSTICE
Montana Board of Crime Control
SB 54: Crime Victims

Background

Montana lawmakers have made positive strides toward improving services for and compensation of crime victims. But while legislative changes have benefited victims, continued work is needed to give full recognition to their interests and better serve their needs. SB 54 proposes a number of changes to ensure that victims are treated fairly.

Provisions

SB 54 would:

- **Eliminate charges** currently imposed on victims for an order of protection and clarify payment by law enforcement of the costs associated with medical examinations related to sexual assault.
- **Extend the subrogation rights** of the Crime Victims' Compensation Program to recoveries received by the victim from any third party.
- **Provide reimbursement** to the compensation program. Once a victim has been fully compensated, the compensation program would be entitled to receive restitution payments made by the offender to reimburse benefits already paid to the victim.
- **Clarify allocation of payments** made by an offender to include probation/parole supervisory fees.
- **Revise the Crime Victims' Compensation Program** to:
 - limit to 26 weeks the wage loss benefits for victims who have lost wages due to injuries from a crime;
 - provide lump-sum death benefits to surviving family members of homicide victims; and
 - include acts of terrorism committed against Montana residents in a foreign country as a compensable crime.

Amendments

The proposed amendments would give crime victims an opportunity to be heard before evidence in a case is destroyed, disposed of, or used for other purposes.

1997 Legislature
January 10, 1997

17

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 1-13-97
BILL NO. SB 54
1-13-97
EX 4

Amendments to Senate Bill 54
Introduced Bill (White)

Prepared by Beth Baker
Department of Justice
January 9, 1997

1. Title, line 7.
Following: "PROTECTION;"
Insert: "PROVIDING THAT A VICTIM MUST BE GIVEN NOTICE OF AND AN OPPORTUNITY TO BE HEARD ON A PETITION FOR DESTRUCTION, DISPOSAL, OR USE OF EVIDENCE;"
2. Page 4, line 29.
Following: "state"
Insert: "or an act of international terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States against a resident of this state"
3. Page 2, line 19.
Following: Section 1
Insert:

"Section 2. Section 46-5-307, MCA, is amended to read:
"46-5-307. Petition for destruction, disposal, or use of evidence. (1) The prosecutor may file a petition with the court alleging that there exist certain items held as evidence either by the law enforcement agency or the court and that the items no longer have any evidentiary value. The petition must include:

- (a) the name and title of petitioner;
- (b) the items of evidence sought to be destroyed, disposed of, or used, including a specific description of each that may be attached to the petition by separate inventory;
- (c) when the items were seized;
- (d) whether the items constitute contraband, which for the purposes of 46-5-306 through 46-5-309 means any property that is unlawful to produce or possess;
- (e) whether the items relate to a filed case and, if so, the court and cause number of the case and its procedural status;
- (f) whether, in those instances in which the items are not contraband, an effort has been made to return the items to the apparent owner and the results of such effort;
- (g) an allegation to the effect that any criminal prosecutions involving the items of evidence have been completed and no appeals are pending or that no criminal charges have been filed or are presently contemplated; and
- (h) the petitioner's intentions relative to disposition of the items.

(2) If the petition requests the destruction or use of contraband, it must describe how destruction is to be accomplished or how the contraband has training or law enforcement value and its contemplated use by a law enforcement agency.

(3) The county attorney shall provide a victim of the offense with a copy of the petition and shall advise the court whether the

victim wishes to be heard on the petition."

{Internal References to 46-5-307:

46-5-305* 46-5-306* 46-5-307* 46-5-309*}

"Section 3. Section 46-5-308, MCA, is amended to read:

"46-5-308. Order. (1) The court may enter an order providing for the destruction or disposition of the evidence. If a victim of the offense wishes to be heard on the petition, the court shall schedule a hearing on the petition and shall allow the victim to be heard in open court. The court shall consider the victim's statements prior to issuing an order under this section. A proposed order must be presented by the petitioner to the court and may include:

(a) authorization to destroy all contraband listed in the petition, the method of destruction, and the time within which such destruction must be accomplished;

(b) if certain contraband is requested by the petitioner for training or law enforcement purposes, authorization to use the items and a description of each;

(c) if the petition requests training or law enforcement use of noncontraband items, authorization to retain the items by the law enforcement agency and a description of the items;

(d) if the evidence is money and the owner cannot be ascertained and no civil forfeiture action is pending, authorization to deposit the money to the appropriate city, county, or state drug forfeiture fund;

(e) if the petition requests, authorization to sell noncontraband property at public sale or auction and deposit the proceeds to the appropriate city, county, or state drug forfeiture fund; or

(f) authorization to destroy all items not otherwise provided for.

(2) The order must specify the time period in which destruction or sale must occur. Within 10 days following the destruction or sale, a return must be filed with the court, listing the property destroyed or sold and the date and method of disposition."

{Internal References to 46-5-308:

46-5-305* 46-5-306* 46-5-307* 46-5-309*}

Renumber: remaining sections

4. Page 3, line 23.

Following: Renumbered Section 5.

Insert:

"Section 6. Section 46-24-206, MCA, is amended to read:

"46-24-206. Property return -- right to be heard on disposition of evidence. (1) A law enforcement agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining such property.

(2) Before the destruction, disposal, or use of evidence that

**NANCY SWEENEY
CLERK OF THE DISTRICT COURT**

*Lewis and Clark County Courthouse
P. O. Box 158
Helena, MT 59624-0158
447-8216*

SENATE JUDICIARY COMMITTEE
COMMITTEE NO. 5
DATE 1-13-97
FILE NO. SB54

January 15, 1997

Hon. Bruce Crippen, Chairman
Senate Judiciary Committee
Capitol Station
Helena, MT 59620

RE: SB54 Revise Victims' Compensation Laws

Dear Senator Crippen,

I am writing this letter to inform you that I am withdrawing my objection to Senate Bill 54. Although the time necessary to process these petitions is considerable, the actual revenue received by the counties from these filing fees is only minimal. Upon discussion with Ms. Shea, the sponsor, it is my understanding that federal funding is contingent upon removal of the filing fee. Due to the small amount of revenue generated by the filing fees, I am certain that the financial benefit the counties receive from the federal funding is greater than that derived from collection of the filing fees on Petitions for Orders of Protection.

Thank you for the opportunity to speak to the committee. Please feel free to contact me if I can provide any further information or clarification of my position. I look forward to appearing before the committee later in the session regarding legislation effecting the Clerk of District Court's office.

Sincerely,



Nancy Sweeney
Clerk of District Court

cc: Senate Judiciary Committee Members

**MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE**

ROLL CALL

DATE

Jan 13, 1997

[illegible]

SEN:1995
wp.rollcall.man
CS-09

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 16, 1997, at 9:30 A.M., in Senate Judiciary Room.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 46, 01/09/97
SB 141, 01/09/97
Executive Action: SB 141 - DO PASS
SB 54 - DO PASS AS AMENDED
SB 6, SB 48, SB 31

EXECUTIVE ACTION ON SB 6

Discussion: **CHAIRMAN CRIPPEN** stated there was a concern about a fiscal note on SB 6. He did not see where a fiscal note was needed.

Valencia Lane commented that someone questioned the language on page 2, at the top of the page, line 4, and felt that was new language going into law and that it would require a fiscal note. That is an editorial change and the same language is on line 2 at the top of page 2. The editors found that sentence too long and awkward and struck the language at the end of the sentence and put

CHAIRMAN CRIPPEN explained that the fiscal note which the committee had not seen yet, had a large impact.

SEN. HALLIGAN withdrew his motion until the committee had time to review the fiscal note.

EXECUTIVE ACTION ON SB 31

Amendments: SB003101.avl and SB003102.avl

Discussion: Ms. Lane explained there were two sets of amendments on SB 31. The longer set was presented to SEN. HALLIGAN by the Department of Corrections. (EXHIBIT 2) They substantially change the bill. SEN. LOREN JENKINS does not approve of these amendments. His amendment, sb003102 (EXHIBIT 3), simply changes one word in his existing bill on second and subsequent offenses making it discretionary with the court and not mandatory.

EXECUTIVE ACTION ON SB 54

Amendments: Baker Amendment (EXHIBIT 4) and Doherty Amendment (EXHIBIT 5)

Discussion: Beth Baker, Department of Justice, commented that the amendments are alternatives. They are not both intended to be adopted. SEN. STEVE DOHERTY requested one set. Both amendments deal with wage loss benefits being capped at 26 weeks. The first amendment would make sure that the medical bills are not paid until all wage loss benefits had been paid unless expressly requested otherwise by the victim. The alternative amendments would simply keep the 26 week wage cap but only impose it if the victims total benefits exceed the \$25,000 maximum.

Motion: SEN. SHARON ESTRADA MOVED THE AMENDMENTS PRESENTED BY BETH BAKER.

Discussion: SEN. DOHERTY urged the committee to reject these amendments. This would reflect payments to a victim of crime. He believes that part of the powerlessness that a victim experiences could be helped by his amendment. There would still be a \$25,000 cap, but when those individuals are out of work for more than 26 weeks, they ought to have the option to decide how the benefits would be paid.

SEN. ESTRADA withdrew her motion.

Executive Session adjourned and the hearing scheduled for 10:00 a.m. began.)

{Tape: 1; Side: a; Approx. Time Count: 10:00 a.m.; Comments: .}

Mr. Johnson stated the holding of the decision isn't based on whether or not any kind of fish and game offense was charged. The decision looks to the conduct of the charged person and analyzes the conduct of the charged person and then looks to the statutory scheme.

CHAIRMAN CRIPPEN commented that if he was killed while elk hunting out of season with his friend, then his friend would only be charged with hunting elk out of season.

Mr. Johnson stated that the decision leaves a lot of gray areas. Down the line there are going to be cases that test the illogic of this decision. This bill says there is no need for this gray area.

Beth Baker commented that this bill will close the door to this kind of argument. They want to preclude the defendant from raising Gatts as a bar to that prosecution.

SEN. BARTLETT commented that the last "Whereas" in the bill mentioned that the prosecution had the discretion to bring charges under either or both codes. Would that be double jeopardy?

Mr. Johnson answered that you cannot be charged for two criminal offenses for identical conduct. A person could engage in a string of criminal conduct, some of which would qualify for prosecution under Title 45 and others of which would qualify for prosecution under Title 87.

Closing by Sponsor:

{Tape: 2; Side: b; Approx. Time Count: 11:00; Comments: .}

SEN. MESAROS closed on SB 141.

EXECUTIVE ACTION ON SB141

Motion/Vote: SEN. REINY JABS MOVED SB 141 DO PASS. Motion passed unanimously.

EXECUTIVE ACTION ON SB54

Amendments: SB005402.av1 (EXHIBIT 10), Baker amendment (EXHIBIT 4), and Doherty Amendment (EXHIBIT 5)

Discussion:

{Tape: 2; Side: b; Approx. Time Count: 11:08; Comments: .}

Ms. Lane explained that at the hearing Beth Baker handed out amendments which she had prepared. She put them into correct technical form and they are numbered sb005402.av1. SEN. DOHERTY had questions regarding limits on the wage damages which could be received by a victim under the Victim Compensation Act. Beth Baker has worked with him and prepared amendments to address his

concerns. They were handed out this morning, (EXHIBIT 5). The Department of Justice has an alternative to that amendment (EXHIBIT 4). These are alternative amendments.

Ms. Baker stated they do not have a problem with SEN. DOHERTY'S amendment. They prepared an alternative as a back up.

Motion: SEN. DOHERTY MOVED TO AMEND SB 54. (EXHIBIT 10)

Discussion: SEN. HOLDEN had concern with the terms "international terrorism" - page 3, the last amendment.

Ms. Baker stated the amendment referred to an act of international terrorism as defined in 18 USC 2331. That is part of the Anti-terrorism and Effective Death Penalty Act of 1996 passed by the last congress and it defines international terrorism to say the term "international terrorism" means activities which (a) involve violent act or acts dangerous to human life that a violation of the criminal laws of the United States or of any state or that would be a criminal violation if committed within the jurisdiction of the United States or any state, (b) appear to be intended: (1) to intimidate or coerce a civilian population, (2) to influence the policy of a government by intimidation or coercion or (3) to effect the conduct of a government by assassination or kidnapping and (c) occur primarily outside the territorial jurisdiction of the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce or the locale in which their perpetrators operate or seek asylum.

SEN. HOLDEN asked if a person travelling to Egypt who was injured there, would be able to receive compensation under the victim's right legislation?

Ms. Baker acknowledged that would be true if the person was a resident of Montana.

SEN. HOLDEN was concerned about the difficulty of investigating terrorism outside our borders.

Substitute Motion: SEN. HOLDEN MOVED TO STRIKE THE LAST AMENDMENT IN SB 54.

Discussion: SEN. DOHERTY commented this bill is about providing some small means of making Montanans, who are the victims of crimes, whole. It does not matter whether the crime occurred in Great Falls, North Dakota, or Coutts, Alberta. The public policy of Montana ought to be a Montanan who is injured by a crime will be made whole notwithstanding where the crime occurred.

SEN. GROSFIELD inquired about federal compensation for victims of international terrorism which occurred outside the boundaries of the United States.

Ms. Baker stated that to her knowledge there is no federal compensation. Part of the Federal Anti-Terrorism Act was to make that a part of the state compensation programs so that victims of overseas terrorism would be compensated. They are instituting grant programs to help cover these costs. The Board of Crime Control is the entity in Montana that receives those funds. They will be allocated by the states. The grant funding comes from the federal government under the Victims of Crime Act to the state of Montana through the Board of Crime Control. The Board would then administer the grant funding.

SEN. GROSFIELD asked how the investigation of overseas terrorism would be handled?

Ms. Baker stated the person need not be charged with and convicted of a crime before the victim may be eligible to receive benefits. The Crime Victim's Program has access to investigative information collected during the investigation of the case.

SEN. GROSFIELD questioned which budget covered these costs?

Ms. Baker explained that other than the expenses of the hearing examiner, this would be part of the Crime Control Division's operating budget. The state will stand to lose some of the Victims of Crime Act eligibility for grant funding if this provision is not in our state law.

SEN. DOHERTY reiterated that his understanding regarding compensation is that we look at the victims, not at the perpetrators of the crime.

SEN. HOLDEN expressed concern with the cooperation received from other countries. Fraud can be a problem. We have an extended potential for larger payments due to international terrorism.

SEN. DOHERTY explained that the compensation would be limited to \$25,000 whether the crime occurs in or out of state. Fraud could be in-state as well as outside the state. He asked what precautions were taken for fraud?

Mr. Kiser stated they would work through the U.S. Attorney's Office. If they receive a claim for an event which occurred in France, they would have to submit dates, times and places. The Board would work through the U.S. Attorney's Office for verification.

SEN. HOLDEN commented on the need to establish guidelines as to what the state government's role is in our lives. Montanans have gone to countries which the U.S. Government has asked them not to go to. They have gone on their own.

Vote: The SUBSTITUTE MOTION FAILED on roll call vote. 7-3

Vote: The MOTION TO AMEND SB 54 (sb005402.avl) CARRIED.

Motion: SEN. DOHERTY MOVED THE AMENDMENT REQUESTED BY SENATOR DOHERTY, JANUARY 15. (EXHIBIT 5)

Discussion:

SEN. DOHERTY explained there is a cap on the payment to victims of crime. His amendment would provide that those payments go to the claimant to be used for whatever he chooses.

CHAIRMAN CRIPPEN asked Beth Baker to explain the difference between the alternate amendments.

Ms. Baker explained the amendment suggested by SEN. DOHERTY (EXHIBIT 5) would strike the 26 week cap on wage loss benefits and instead put in the provision of the law which allows for the payment of medical benefits that unless the claimant specifically requests, the medical benefits would not be paid until all of the wage loss claims had been paid. The victim would have the right to be fully compensated for wage loss before the medical benefits were paid unless the victim wanted the medical benefits paid first. The alternative amendment (EXHIBIT 4) would retain the 26 week cap but only in the event the full \$25,000 benefit limit is reached.

Mr. Kiser explained that the circumstance is that the medical is usually over \$25,000. They have reached that point on a number of claims. They have claimants who will never recover. They are placed into a confrontation with the medical providers versus the victim.

SEN. GROSFIELD summarized that SEN. DOHERTY'S amendment would use more of the crime victims compensation fund.

SEN. DOHERTY explained that if there was \$20,000 in wage loss and \$20,000 in medical bills, the victim would have the choice of first being compensated for his/her wage loss and then getting the other \$5,000 to use for medical bills. Under the Department of Justice amendment, they would only be compensated up to the 26 weeks and the remainder would go toward medical bills.

SEN. HOLDEN questioned how this was handled to date?

Mr. Kiser explained that at this time they have the victim decide. The problem is with the medical providers. They have no guidance with respect to statute to handle it this way.

CHAIRMAN CRIPPEN commented that this would not relieve the injured party of the obligation to pay their medical bills. This is a reimbursement aspect.

Substitute Motion: SEN. HOLDEN SUBSTITUTED A MOTION TO ADOPT THE AMENDMENTS PREPARED BY THE DEPARTMENT OF JUSTICE.

Vote: The substitute motion failed.

Vote: The motion by SEN. DOHERTY carried with SEN. HOLDEN and SEN. REINY JABS voting no.

Motion: SEN. ESTRADA MOVED SB 54 DO PASS AS AMENDED.

Discussion:

SEN. BARTLETT, referring to page 4, line 27, questioned the broad language under collateral source. What is the Department trying to achieve?

Ms. Baker stated the intent is that in the event the victim sues another person and is successful, the victim's program may recover if the victim receives a recovery from the offender or from a collateral source. The clear intent is to make sure the Crime Victim's Program can assert its subrogation interest if the victim successfully sues someone else over the very incident. The subrogation statute does not appear in this bill. It is fairly detailed concerning when the Victim's Program can recover when the victim sues. Mr. Hill, MTLA, suggested that statute be amended instead of the definition of collateral source.

Vote: The MOTION CARRIED UNANIMOUSLY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 1/16/97

FILE NO. SB 54

SB 54 04

Amendments to Senate Bill 54
Introduced Bill (White)

Prepared by Beth Baker
Department of Justice
January 15, 1997

*alternate
to ~~other~~
Doherty's*

1. Page 6, line 3.
Following: "market"
Strike: "or"
Insert: ". If the claimant has eligible claims for benefits under this section that exceed the aggregate amount allowed under subsection (5), the claimant is entitled to benefits under this subsection"
Following: "weeks"
Strike: ", whichever occurs first"
2. Page 6, line 28.
Following: "market"
Strike: "or"
Insert: ". If the claimant has eligible claims for benefits under this section that exceed the aggregate amount allowed under subsection (5), the claimant is entitled to benefits under this subsection"
Following: "weeks"
Strike: ", whichever occurs first"

Amendments to Senate Bill 54
Introduced Bill (White)

Requested by Senator Doherty
Prepared by Beth Baker
Department of Justice
January 15, 1997

~~105403~~

1. Page 6, line 3.
Following: "market"
Strike: "or until payments are made for 26 weeks, whichever occurs first"
2. Page 6, line 6.
Following: "conduct."
Insert: "Unless expressly requested by the claimant, benefits may not be paid under this subsection until the claimant has been fully compensated for total actual wage loss as provided in subsection (1) or subsection (7)."
3. Page 6, line 28.
Following: "market"
Strike: "or" through "first" on line 29.

Amendments to Senate Bill No. 54
First Reading Copy (white)

Requested by Senator Shea
For the Committee on Judiciary

Prepared by Beth Baker (put into form by Valencia Lane)
January 13, 1997

1. Title, line 7.

Following: "PROTECTION;"

Insert: "PROVIDING THAT A VICTIM MUST BE GIVEN NOTICE OF AND AN
OPPORTUNITY TO BE HEARD ON A PETITION FOR DESTRUCTION,
DISPOSAL, OR USE OF EVIDENCE;"

2. Title, line 15.

Following: "40-15-204,"

Insert: "46-5-307, 46-5-308,"

Following: "46-18-251,"

Insert: "46-24-206,"

3. Page 2.

Following: line 18

Insert: " **Section 2.** Section 46-5-307, MCA, is amended to read:

"**46-5-307. Petition for destruction, disposal, or use of evidence.** (1) The prosecutor may file a petition with the court alleging that there exist certain items held as evidence either by the law enforcement agency or the court and that the items no longer have any evidentiary value. The petition must include:

(a) the name and title of the petitioner;

(b) the items of evidence sought to be destroyed, disposed of, or used, including a specific description of each that may be attached to the petition by separate inventory;

(c) when the items were seized;

(d) whether the items constitute contraband, which for the purposes of 46-5-306 through 46-5-309 means any property that is unlawful to produce or possess;

(e) whether the items relate to a filed case and, if so, the court and cause number of the case and its procedural status;

(f) whether, in those instances in which the items are not contraband, an effort has been made to return the items to the apparent owner and the results of ~~such~~ the effort;

(g) an allegation to the effect that any criminal prosecutions involving the items of evidence have been completed and no appeals are pending or that no criminal charges have been filed or are presently contemplated; and

(h) the petitioner's intentions relative to disposition of the items.

(2) If the petition requests the destruction or use of contraband, it must describe how destruction is to be accomplished or how the contraband has training or law enforcement value and its contemplated use by a law enforcement agency.

(3) The county attorney shall provide a victim of the offense with a copy of the petition and shall advise the court

whether the victim wishes to be heard on the petition."

Section 3. Section 46-5-308, MCA, is amended to read:

"46-5-308. Order. (1) The court may enter an order providing for the destruction or disposition of the evidence. If a victim of the offense wishes to be heard on the petition, the court shall schedule a hearing on the petition and shall allow the victim to be heard in open court. The court shall consider the victim's statements prior to issuing an order under this section. A proposed order must be presented by the petitioner to the court and may include:

(a) authorization to destroy all contraband listed in the petition, the method of destruction, and the time within which ~~such~~ the destruction must be accomplished;

(b) if certain contraband is requested by the petitioner for training or law enforcement purposes, authorization to use the items and a description of each;

(c) if the petition requests training or law enforcement use of noncontraband items, authorization to retain the items by the law enforcement agency and a description of the items;

(d) if the evidence is money and the owner cannot be ascertained and no civil forfeiture action is pending, authorization to deposit the money to the appropriate city, county, or state drug forfeiture fund;

(e) if the petition requests, authorization to sell noncontraband property at public sale or auction and to deposit the proceeds to the appropriate city, county, or state drug forfeiture fund; or

(f) authorization to destroy all items not otherwise provided for.

(2) The order must specify the time period in which destruction or sale must occur. Within 10 days following the destruction or sale, a return must be filed with the court, listing the property destroyed or sold and the date and method of disposition."

Renumber: subsequent sections

4. Page 3.

Following: line 22

Insert: **"Section 6.** Section 46-24-206, MCA, is amended to read:

"46-24-206. Property return -- right to be heard on disposition of evidence. (1) A law enforcement agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining ~~such~~ the property.

(2) Before the destruction, disposal, or use of evidence that is not the victim's property, the court shall, as provided in 46-5-308, give the victim an opportunity to be heard as to the appropriate disposition of the evidence."

Renumber: subsequent sections

5. Page 4, line 29.

Following: "state"

Insert: "or an act of international terrorism, as defined in 18
U.S.C. 2331, committed outside of the United States against
a resident of this state"

Amendments to Senate Bill 54
Introduced Bill (White)

Requested by Senator Doherty
Prepared by Beth Baker
Department of Justice
January 15, 1997

1. Page 6, line 3.
Following: "market"
Strike: "or until payments are made for 26 weeks, whichever occurs first"
2. Page 6, line 6.
Following: "conduct."
Insert: "Unless expressly requested by the claimant, benefits may not be paid under this subsection until the claimant has been fully compensated for total actual wage loss as provided in subsection (1) or subsection (7)."
3. Page 6, line 28.
Following: "market"
Strike: "or" through "first" on line 29.

adopted

58005402.94

new #

.05

HOUSE JUDICIARY

Page 8

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0031	JENKINS, LOREN	PROVIDE FOR CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS	2/01	3/06	CONCUR	03/11	VOTE: 15-0	3/11	
SB0032	HALLIGAN, MIKE	TEMPORARY PROPERTY RESTRAINING ORDER IN DIVORCE PROCEEDINGS	1/25	3/06	CONCUR	03/06	VOTE: 14-3	3/07	
SB0033	HALLIGAN, MIKE	TEMPORARY FAMILY SUPPORT ORDER IN DIVORCE PROCEEDINGS	1/20	3/06	CONCUR	03/06	VOTE: 14-3	3/07	
SB0036	LYNCH, J. D.	CODE COMMISSIONER BILL	1/18	2/04	CONCUR	02/04	VOTE: 15-0	2/06	
SB0044	HOLDEN, RIC	LIMIT MOTOR VEHICLE LIABILITY INSURER'S LIABILITY UNDER THE POLICY	1/24	3/05	03/06/97 Tabled 14-1	CONCUR AS AMENDED	03/14	VOTE: 16-4	3/14
SB0046	SPRAGUE, MIKE	CONFISCATION OF DRIVER'S LICENSE OF YOUTH WHO'S DELINQUENT/NEEDS SUPERVISION	1/25	3/07	CONCUR AS AMENDED	03/07	VOTE: 20-0	3/08	
SB0054	SHEA, DEBBIE	REVISE VICTIMS' COMPENSATION LAWS	1/21	3/05	CONCUR AS AMENDED	03/06	VOTE: 16-0	3/07	
SB0079	CHRISTIAENS, CHRIS	STATE AUDITOR REGULATION OF THE SALE OF LIVING TRUSTS	2/04	3/05	CONCUR AS AMENDED	03/10	VOTE: 14-3	3/11	
SB0092	ECK, DOROTHY	REVISE COMPOSITION & DUTIES OF INTERAGENCY COORDINATING COUNCIL	1/25	3/07	CONCUR	03/07	VOTE: 16-4	3/08	
SB0103	VAN VALKENBURG, FRED	PROVIDE FOR IMMUNITY OF NATIONAL GUARD ENGAGED IN FEDERAL ACTIVITIES	1/20	2/06	CONCUR	02/06	VOTE: 18-1	2/07	
SB0106	VAN VALKENBURG, FRED	GENERALLY REVISE DUI ALCOHOL AND DRUG TEST LAWS	1/25				VOTE:	2/14/97	
SB0110	BECK, TOM	DPHHS AUTHORITY TO ESTABLISH PARENTAL CONTRIBUTIONS TOWARDS YOUTH'S CARE	1/28	3/07	TABLED ON	03/07	VOTE: 12-7		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 5, 1997, at 8 AM,
in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 44, SB 79, SB 54, SB 212

HEARING ON SB 44

Opening Statement by Sponsor: SEN. RIC HOLDEN

{Tape: 1; Side: A; Approx. Time Count: 1.0}

Proponents' Testimony:

ROGER MC GLENN, IIAM

{Tape: 1; Side: A; Approx. Time Count: 8.6; Comments: This
proponent was not listed with the Commissioner of Political
Practices nor was "IIAM" identifiable.}

ROBERT PHILLIPS, SAFECO Insurance Company

{Tape: 1; Side: A; Approx. Time Count: 10.7}

{Tape: 2; Side: A; Approx. Time Count: 1.7}

SUSAN GOOD, Montana Association of Life Underwriters

{Tape: 2; Side: A; Approx. Time Count: 4.1}

BILL OLSON, AARP

{Tape: 2; Side: A; Approx. Time Count: 5.5}

GREG OVERTURF, Department of Commerce

{Tape: 2; Side: A; Approx. Time Count: 6.0}

GENE JANUSSI

{Tape: 2; Side: A; Approx. Time Count: 6.9}

ERN BERTLESEN, Montana Senior Citizen's Association

{Tape: 2; Side: A; Approx. Time Count: 8.1}

MORRIS BRUSETT, Montana Conference of Seventh-Day Adventists

EXHIBIT 9

{Tape: 2; Side: A; Approx. Time Count: 9.1}

Questions From Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Count: 11.4-36.0}

Closing by Sponsor: SEN. CHRISTIAENS

{Tape: 2; Side: A; Approx. Time Count: 36.2}

HEARING ON SB 54

Opening Statement by Sponsor: SEN. DEBBIE BOWMAN SHEA

{Tape: 2; Side: A; Approx. Time Count: 37.5}

Proponents' Testimony:

GENE KIZER, Montana Board of Crime Control

EXHIBIT 10

{Tape: 2; Side: A; Approx. Time Count: 40.3}

JOHN CONNOR, Department of Justice

{Tape: 2; Side: B; Approx. Time Count: 8.2}

MIKE CRONIN, Department of Corrections

{Tape: 2; Side: B; Approx. Time Count: 10.2}

Questions From Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Count: 12.3}

Closing by Sponsor: SEN. SHEA

{Tape: 2; Side: B; Approx. Time Count: 26.8}

HEARING ON SB 212

Opening Statement by Sponsor: SEN. WALTER MC NUTT

{Tape: 2; Side: B; Approx. Time Count: 28.8}

DEPARTMENT OF JUSTICE
Montana Board of Crime Control
SB 54: Crime Victims

EXHIBIT 10
DATE 2/5/97
SB 54

Background

Montana lawmakers have made positive strides toward improving services for and compensation of crime victims. But while legislative changes have benefited victims, continued work is needed to give full recognition to their interests and better serve their needs. SB 54 proposes a number of changes to ensure that victims are treated fairly.

Provisions

SB 54 would:

- **Eliminate charges** currently imposed on victims to petition for an order of protection and clarify payment by law enforcement of the costs associated with medical examinations related to sexual assault.
- **Extend the subrogation rights** of the Crime Victims' Compensation Program to recoveries received by the victim from any third party. For example, if a victim recovered damages from the owner of a shopping mall where he or she was assaulted, the Crime Victims program could be reimbursed for benefits it had already paid for that victim's injuries.
- **Provide reimbursement** to the compensation program. Once a victim has been fully compensated, the compensation program would be entitled to receive restitution payments made by the offender to reimburse benefits already paid to the victim.
- **Clarify allocation of payments** made by an offender to include probation/parole supervisory fees.
- **Revise the Crime Victims' Compensation Program to:**
 - pay the full extent of wage loss benefits for victims who have lost wages due to injuries from a crime, unless the victim requests that medical costs be paid first. This would give victims more control over the distribution of benefits.
 - provide lump-sum death benefits to surviving family members of homicide victims; and
 - include acts of terrorism committed against Montana residents in a foreign country as a compensable crime.
- **Give crime victims an opportunity to be heard** before evidence in a case is destroyed, disposed of, or used for other purposes.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3/5/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH 9:15	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 6, 1997, at 8 AM,
in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 16, SB 32, SB 33, SB 31
POSTED 2/21/97
Executive Action: BE CONCURRED IN:
SB 16, SB 32, SB 33
BE CONCURRED IN AS AMENDED:
SB 54, SB 212
TABLED: SB 44

HEARING ON SB 16

Opening Statement by Sponsor: SEN. MIKE HALLIGAN
{Tape: 1; Side: A; Approx. Time Count: 2.0}

Vote: The motion carried 14 - 3; REPS. BOHARSKI, MC GEE and CLARK voting no. (REP. AHNER voted aye by proxy; REP. MC GEE voted no by proxy. REPS. SMITH, MOLNAR and KOTTEL were not present for the vote and left no proxy votes.) REP. ELLINGSON will carry SB 33.

EXECUTIVE ACTION ON SB 16

Motion/Vote: REP. ANDERSON moved SB 16 BE CONCURRED IN. The motion carried 14 - 3; REPS. BOHARSKI, MC GEE and CLARK voting no. (REP. AHNER voted aye by proxy; REP. MC GEE voted no by proxy. REPS. SMITH, MOLNAR and KOTTEL were not present for the vote and left no proxy votes.) REP. ELLINGSON will carry SB 16.

EXECUTIVE ACTION ON SB 32

Motion: REP. WYATT moved SB 32 BE CONCURRED IN.
{Tape: 1; Side: B; Approx. Time Count: 13.6}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 14.0}

Vote: The motion carried 14 - 3; REPS. BOHARSKI, MC GEE and CLARK voting no. (REP. AHNER voted aye by proxy; REP. MC GEE voted no by proxy. REPS. SMITH, MOLNAR and KOTTEL were not present for the vote and left no proxy votes.) REP. ELLINGSON will carry SB 32.

EXECUTIVE ACTION ON SB 54

Motion: REP. WYATT moved SB 54 BE CONCURRED IN.
{Tape: 1; Side: B; Approx. Time Count: 19.0}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 20.5 - 24.6}

Motion/Vote: REP. BOHARSKI moved to amend by striking subsection 3 and inserting corresponding language from HB 540. The motion carried 16 - 0. (REPS. AHNER, MC GEE, KOTTEL and MOLNAR were not present for the vote and left no proxy votes.)

Motion/Vote: REP. HANSON moved SB 54 BE CONCURRED IN AS AMENDED. The motion carried 16 - 0. (REPS. AHNER, MC GEE, KOTTEL and MOLNAR were not present for the vote and left no proxy votes.) REP. MC CULLOCH will carry SB 54.

EXECUTIVE ACTION ON SB 79

Motion: REP. SANDS moved SB 79 BE CONCURRED IN.
{Tape: 1; Side: B; Approx. Time Count: 28.2}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 28.8-31.5; Comments: REP. SANDS withdrew the motion pending further information.}

SENATE BILL NO. 54

INTRODUCED BY SHEA

BY REQUEST OF THE MONTANA BOARD OF CRIME CONTROL AND THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO CRIME VICTIMS AND VICTIMS COMPENSATION; PROHIBITING THE IMPOSITION OF CHARGES FOR FILING A PETITION FOR AN ORDER OF PROTECTION; PROVIDING THAT A VICTIM MUST BE GIVEN NOTICE OF AND AN OPPORTUNITY TO BE HEARD ON A PETITION FOR DESTRUCTION, DISPOSAL, OR USE OF EVIDENCE; CLARIFYING THAT RESTITUTION PAYMENTS WILL BE MADE TO THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT IF THE ACCOUNT HAS PAID BENEFITS TO THE VICTIM; PROVIDING FOR REIMBURSEMENT OF OTHER GOVERNMENT AGENCIES AND OF INSURERS WHO HAVE COMPENSATED THE VICTIM; SPECIFYING PROBATION SUPERVISORY FEES IN THE ALLOCATION OF PAYMENTS MADE BY AN OFFENDER; CLARIFYING THE OBLIGATION OF LAW ENFORCEMENT AGENCIES TO PAY FOR INVESTIGATIVE MEDICAL EXAMINATIONS OF VICTIMS OF CERTAIN SEXUAL OFFENSES; AUTHORIZING VICTIMS' DEATH BENEFITS TO BE PAID BY LUMP SUM; EXTENDING THE SUBROGATION RIGHTS OF THE CRIME VICTIMS COMPENSATION PROGRAM TO RECOVERIES RECEIVED BY THE VICTIM FROM ANY THIRD PARTY; LIMITING VICTIMS' WAGE LOSS BENEFITS TO 26 WEEKS; AMENDING SECTIONS 40-15-204, 46-5-307, 46-5-308, 46-15-411, 46-18-251, 46-24-206, 53-9-102, 53-9-103, AND 53-9-128, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-15-204, MCA, is amended to read:

"40-15-204. Written orders of protection. (1) The court may ~~determine~~, on the basis of the respondent's history of violence, the severity of the offense at issue, and the evidence presented at the hearing, determine that, to avoid further injury or harm, the petitioner needs permanent protection. The court may order that the order of protection remain in effect permanently.

(2) In a dissolution proceeding, the district court may, upon request, issue either an order of protection for an appropriate period of time or a permanent order of protection.

(3) An order of protection may include all of the relief listed in 40-15-201, when appropriate.

(4) An order of protection may include restraining the respondent from any other named family member who is a minor. If this restriction is included, the respondent must be restrained from having contact with the minor for an appropriate time period as directed by the court or permanently if the court finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

(5) An order of protection issued under this section may continue for an appropriate time period as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be terminated upon the petitioner's request that the order be dismissed.

(6) An order of protection must include a section that indicates whether there are any other civil or criminal actions pending involving the parties, a brief description of the action, and the court in which the action is filed.

(7) An amendment to a temporary order of protection or to an order of protection is effective only after it has been served in writing on the opposing party.

(8) There is no cost to file a petition for an order of protection or for service of an order of protection.

(9) Any temporary order of protection or order of protection must conspicuously bear the following:
"Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties of up to \$10,000 in fines and up to a 5-year jail sentence.

This order is issued by the court, and the respondent is forbidden to do any act listed in the order, even if invited by the petitioner or another person. This order may be amended only by further order of this court or another court that assumes jurisdiction over this matter."

SECTION 2. SECTION 46-5-307, MCA, IS AMENDED TO READ:

"46-5-307. Petition for destruction, disposal, or use of evidence. (1) The prosecutor may file a petition with the court alleging that there exist certain items held as evidence either by the law enforcement agency or the court and that the items no longer have any evidentiary value. The petition must include:

(a) the name and title of the petitioner;

(b) the items of evidence sought to be destroyed, disposed of, or used, including a specific description of each that may be attached to the petition by separate inventory;

(c) when the items were seized;

(d) whether the items constitute contraband, which for the purposes of 46-5-306 through 46-5-309

1 means any property that is unlawful to produce or possess;

2 (e) whether the items relate to a filed case and, if so, the court and cause number of the case and
3 its procedural status;

4 (f) whether, in those instances in which the items are not contraband, an effort has been made to
5 return the items to the apparent owner and the results of ~~such~~ the effort;

6 (g) an allegation to the effect that any criminal prosecutions involving the items of evidence have
7 been completed and no appeals are pending or that no criminal charges have been filed or are presently
8 contemplated; and

9 (h) the petitioner's intentions relative to disposition of the items.

10 (2) If the petition requests the destruction or use of contraband, it must describe how destruction
11 is to be accomplished or how the contraband has training or law enforcement value and its contemplated
12 use by a law enforcement agency.

13 (3) The county attorney shall provide a victim of the offense with a copy of the petition and shall
14 advise the court whether the victim wishes to be heard on the petition."
15

16 **SECTION 3. SECTION 46-5-308, MCA, IS AMENDED TO READ:**

17 "46-5-308. Order. (1) The court may enter an order providing for the destruction or disposition
18 of the evidence. If a victim of the offense wishes to be heard on the petition, the court shall schedule a
19 hearing on the petition and shall allow the victim to be heard in open court. The court shall consider the
20 victim's statements prior to issuing an order under this section. A proposed order must be presented by
21 the petitioner to the court and may include:

22 (a) authorization to destroy all contraband listed in the petition, the method of destruction, and the
23 time within which ~~such~~ the destruction must be accomplished;

24 (b) if certain contraband is requested by the petitioner for training or law enforcement purposes,
25 authorization to use the items and a description of each;

26 (c) if the petition requests training or law enforcement use of noncontraband items, authorization
27 to retain the items by the law enforcement agency and a description of the items;

28 (d) if the evidence is money and the owner cannot be ascertained and no civil forfeiture action is
29 pending, authorization to deposit the money to the appropriate city, county, or state drug forfeiture fund;

30 (e) if the petition requests, authorization to sell noncontraband property at public sale or auction

1 and to deposit the proceeds to the appropriate city, county, or state drug forfeiture fund; or

2 (f) authorization to destroy all items not otherwise provided for.

3 (2) The order must specify the time period in which destruction or sale must occur. Within 10 days
4 following the destruction or sale, a return must be filed with the court, listing the property destroyed or sold
5 and the date and method of disposition."

6
7 **Section 4.** Section 46-15-411, MCA, is amended to read:

8 **"46-15-411. Payment for medical evidence.** (1) The local law enforcement agency within whose
9 jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall
10 pay for the medical examination of a victim of the alleged sexual intercourse without consent offense when
11 the examination is directed by ~~such~~ the agency ~~and or~~ when evidence obtained by the examination is used
12 for the investigation, ~~or~~ prosecution, or resolution of an offense.

13 (2) This section does not require a law enforcement agency to pay any costs of treatment for
14 injuries resulting from the alleged offense."

15
16 **Section 5.** Section 46-18-251, MCA, is amended to read:

17 **"46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) If an offender is
18 subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same
19 criminal proceeding, money collected from the offender must be allocated as provided in this section.

20 (2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution
21 and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50%
22 of all money collected from the defendant must be applied to payment of restitution and the balance must
23 be applied to other payments in the following order:

24 (a) payment of charges imposed pursuant to 46-18-236;

25 (b) payment of supervisory fees imposed pursuant to 46-23-1031;

26 ~~(b)(c)~~ payment of costs imposed pursuant to 46-18-232 or 46-18-233;

27 ~~(c)(d)~~ payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

28 ~~(d)(e)~~ any other payments ordered by the court.

29 ~~(3) If the victim receives benefits under Title 53, chapter 9, restitution payments must be~~
30 ~~distributed to the division of crime control of the department of justice in accordance with 53-9-132. In~~

~~order to receive restitution payments, the division shall submit to the clerk of court or agency designated by the court proof of compensation benefits paid to the victim. Once the victim has been fully compensated for the amount of restitution ordered by the court, either from the crime victims compensation and assistance account or by direct restitution payments, remaining restitution payments must be paid to the division to reimburse benefits previously paid to the victim.~~

(3) THE MONEY APPLIED UNDER SUBSECTION (2) TO THE PAYMENT OF RESTITUTION MUST BE PAID IN THE FOLLOWING ORDER:

(A) TO THE VICTIM UNTIL THE VICTIM'S UNREIMBURSED PECUNIARY LOSS IS SATISFIED;

(B) TO THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT PROVIDED FOR IN 53-9-109 UNTIL THE ACCOUNT IS FULLY REIMBURSED FOR COMPENSATION TO THE VICTIM;

(C) TO ANY OTHER GOVERNMENT AGENCY THAT HAS COMPENSATED THE VICTIM FOR THE VICTIM'S PECUNIARY LOSS;

(D) TO ANY INSURANCE COMPANY THAT HAS COMPENSATED THE VICTIM FOR THE VICTIM'S PECUNIARY LOSS.

~~(3)(4)~~ If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution."

SECTION 6. SECTION 46-24-206, MCA, IS AMENDED TO READ:

"46-24-206. Property return -- right to be heard on disposition of evidence. (1) A law enforcement agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining ~~such~~ the property.

(2) Before the destruction, disposal, or use of evidence that is not the victim's property, the court shall, as provided in 46-5-308, give the victim an opportunity to be heard as to the appropriate disposition of the evidence."

Section 7. Section 53-9-102, MCA, is amended to read:

"53-9-102. Legislative purpose and intent. It is the intent of the legislature ~~of this state~~ to provide a method of compensating those persons within the state who are innocent victims of criminal acts,

1 including acts of international terrorism, as defined in 18 U.S.C. 2331, that are committed outside of the
2 United States against a resident of this state, and who suffer bodily injury or death and those innocent
3 citizens of this state who are injured or killed in a state that does not have a crime victims compensation
4 program that covers out-of-state residents injured or killed in that state. To this end, it is the legislature's
5 intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons
6 and to coordinate victims' assistance programs."

7
8 **Section 8.** Section 53-9-103, MCA, is amended to read:

9 **"53-9-103. Definitions.** As used in this part, the following definitions apply:

10 (1) "Claimant" means any of the following claiming compensation under this part:

- 11 (a) a victim;
12 (b) a dependent of a deceased victim; or
13 (c) an authorized person acting on behalf of any of them.

14 (2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for
15 economic loss otherwise compensable under this part ~~which~~ that the claimant has received or ~~which~~ that
16 is readily available to ~~him~~ the claimant from:

- 17 (a) the offender;
18 (b) the government of the United States or any agency thereof, a state or any of its political
19 subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or
20 advantages makes them excess or secondary to benefits under this part;
21 (c) social security, medicare, and medicaid;
22 (d) workers' compensation;
23 (e) wage continuation programs of any employer;
24 (f) proceeds of a contract of insurance payable to the claimant for loss ~~which~~ that was sustained
25 because of the criminally injurious conduct;
26 (g) a contract, including an insurance contract, providing hospital and other health care services
27 or benefits for disability. ~~Any such~~ A contract in this state may not provide that benefits under this part
28 ~~shall be~~ are a substitute for benefits under the contract or that the contract is a secondary source of
29 benefits and benefits under this part are a primary source.
30 (h) a crime victims compensation program operated by the state in which the victim was injured

1 or killed that compensates residents of this state injured or killed in that state; or

2 (i) any other third party.

3 (3) "Criminally injurious conduct" means conduct that:

4 (a) occurs or is attempted in this state OR AN ACT OF INTERNATIONAL TERRORISM, AS DEFINED
5 IN 18 U.S.C. 2331, COMMITTED OUTSIDE OF THE UNITED STATES AGAINST A RESIDENT OF THIS
6 STATE;

7 (b) results in bodily injury or death; and

8 (c) is punishable by fine, imprisonment, or death ~~or would be so punishable but for the fact except~~
9 that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state;
10 however, criminally injurious conduct does not include conduct arising out of the ownership, maintenance,
11 or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense
12 defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or
13 death was inflicted by the driver of a motor vehicle who is found by the division, by a preponderance of
14 the evidence, to have been operating the motor vehicle while under the influence, as that term is defined
15 in 61-8-401; or

16 (d) is committed in a state without a crime victims compensation program that covers a resident
17 of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

18 (4) "Dependent" means a natural person who is recognized under the law of this state to be wholly
19 or partially dependent upon the victim for care or support and includes a child of the victim conceived
20 before the victim's death but born after the victim's death, including a child that is conceived as a result
21 of the criminally injurious conduct.

22 (5) "Division" means the division of crime control of the department of justice.

23 (6) "Victim" means a person who suffers bodily injury or death as a result of:

24 (a) criminally injurious conduct;

25 (b) ~~his~~ the person's good faith effort to prevent criminally injurious conduct; or

26 (c) ~~his~~ the person's good faith effort to apprehend a person reasonably suspected of engaging in
27 criminally injurious conduct."

28
29 **Section 9.** Section 53-9-128, MCA, is amended to read:

30 **"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits

1 when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct.
2 During the time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no
3 reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount
4 is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum of
5 one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments
6 must be made at the end of each 2-week period. Weekly compensation payments may not be paid for the
7 first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1
8 week, weekly compensation payments must be paid from the date the wage loss began. Weekly
9 compensation payments must continue until the claimant has a reasonable prospect of being regularly
10 employed in the normal labor market ~~or until payments are made for 26 weeks, whichever occurs first.~~

11 (2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon,
12 reasonable hospital services and medicines, and other treatment approved by the division for the injuries
13 suffered due to criminally injurious conduct. UNLESS EXPRESSLY REQUESTED BY THE CLAIMANT,
14 BENEFITS MAY NOT BE PAID UNDER THIS SUBSECTION UNTIL THE CLAIMANT HAS BEEN FULLY
15 COMPENSATED FOR TOTAL ACTUAL WAGE LOSS BENEFITS AS PROVIDED IN SUBSECTION (1) OR (7).

16 (3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are
17 entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66
18 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to
19 a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly
20 compensation payments must be made at the end of each 2-week period.

21 (b) Benefits under subsection (3)(a) must be paid to the spouse for the benefit of the spouse and
22 other dependents unless the division determines that other payment arrangements should be made. If a
23 spouse dies or remarries, benefits under subsection (3)(a) must cease to be paid to the spouse but must
24 continue to be paid to the other dependents as long as their dependent status continues.

25 (4) Reasonable funeral and burial expenses of the victim, not exceeding \$3,500, must be paid if
26 all other collateral sources have properly paid expenses but have not covered all expenses.

27 (5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's
28 death because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000
29 in the aggregate.

30 (6) Compensation benefits are not payable for pain and suffering, inconvenience, physical

1 impairment, or nonbodily damage.

2 (7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result
3 of the injury has no reasonable prospect of being regularly employed in the normal labor market and who
4 was employable but was not employed at the time of the injury may in the discretion of the division be
5 awarded weekly compensation benefits in an amount determined by the division not to exceed \$100 per
6 week. Weekly compensation payments must continue until the claimant has a reasonable prospect of being
7 regularly employed in the normal labor market ~~or for a shorter period as determined by the division until~~
8 ~~payments are made for 26 weeks, whichever occurs first.~~ The claimant must be awarded benefits as
9 provided in subsection (2).

10 (b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was
11 employable but not employed at the time of death may in the discretion of the division be awarded, in a
12 gross single amount payable to all dependents, a sum not to exceed \$100 per week, which is payable in
13 the manner and for the period provided by subsection (3)(b) or for a shorter period as determined by the
14 division. The claimant must be awarded benefits as provided in subsection (4).

15 (8) ~~Amounts~~ Except for benefits paid under subsections (3), (5), and (7)(b) or other benefits paid
16 when the victim is killed as a result of criminally injurious conduct, amounts payable as weekly
17 compensation may not be commuted to a lump sum and may not be paid less frequently than every 2
18 weeks.

19 (9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister
20 of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental
21 health treatment received as a result of the victim's death.

22 (b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is
23 a victim of criminally injurious conduct involving a sexual crime offense and who is not entitled to receive
24 services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a
25 result of ~~the crime~~ that criminally injurious conduct.

26 (c) Total payments made under subsections (9)(a) and (9)(b) may not exceed \$2,000 or 12
27 consecutive months of treatment for each person, whichever occurs first."

28
29 **NEW SECTION. Section 10. Effective date.** [This act] is effective July 1, 1997.

30 -END-